1890-024 Chancery Causes: James Payne vs. Sallie Payne
Lee Co.

Wierman, Gulley, Fry, Gulley, Lamont

CA-Divorce
T-Vice

To the honorable W. S. K. Morrison Judge of the Circuit Court of Lee County Virginia.

Humbly complaining, your orator James Payne would respectfully represent and shew unto your honor, that in the year 1877, he was married to Sallie Wierman, who is his present wife, and that he lived with his said wife until about a year ago, at which time he became apprised of the fact that his said wife was unfaithful to him and had been guilty at that time of adultery; that he thereupon seperated from his said wife and has not cohabited with her since his knowledge of the fact of her said adultery. and that his said wife's acts of adultery were not committed by his procurement or connivance. Your orator will further shew unto your honor that his said wife is a resident, and has been for more than a year, of said County of Lee and State of Va. that he & his said wife have four children, three boys & one girl.

The object of this bill therefore is to obtain a divorce from the bonds of matrimony existing between your orator and his said wife, to this end therefore he prays that the said Sallie Payne may be made a defendant to this bill and required to answer the same on oath, that your orator may be

entirely divorced from her and the marriage dissolved. And for all further and general relief. May process issue directed &c. And your orator will ever pray.

Richmond & Dr. Pl.

(R&C

James Payne

vs } Bill in Chy.

Sallie Payne.

1889, 1st Aug. Rules Bill filed Sha not Exd & Cont.

" 2nd Aug & 1st & 2. Sept. Contd

" 1st Oct. ~~alias~~ Sha and Rec'd

" 2nd Oct. Sha Exd & Ret.

" 1st Nov. Contd 2nd Nov.

Decree this Cons'd & cause set for hearing by Plaintiff.

1890 Mr Decree final

Defts Costs

C 7.69 Defts Cost

8 70

J.P. 2 25 C 3.95

$12.64 C 25

S.P. 75

80 to 90 C 15.00

P $19.91

To the Hon. H. S. K. Morison, Judge of the Circuit Court for Lee Co.,

The demurrer and answer of Sallie Payne to a bill of complt. filed against her in this Court by James Payne:

For demurrer thereto your respondent says that the said bill is not sufficient in law. And of this she prays Judgment.

But if your respondent is mistaken in her cause for demurrer and further answer thereto be necessary, answering she says: It is true that she and the said plaintiff were duly married about the time mentioned in plaintiffs; that there were three boys and one girl as the issue of said marriage; and that her said husband left her about less than a year ago. But your respondent most emphatically denys that she has ever been guilty of adultery, or that she has ever had connection or sexual intercourse with any other than her husband. She alleges that she has always been true and faithful to her said husband.

Your respondent alleges that

that her husband has been unfaithful to her and has been himself guilty of adulterous acts.

Your respondent says that her said husband was the owner of a real estate and before he left her he induced her to part with her dower rights in the same. He sold the same for $1500 to one Wm Hoskins, and in a very short time after she had signed & acknowledged the deed to the same, her said husband left and forsook her, and now in this court seeks a divorce from his wife, by heaping disgrace and calumny on her good name and character.

Your respondent further says that when her said husband left her and induced her to part with her rights in said land, she was left with the said children who are of tender years, to support and maintain, which is a great hardship upon both them and her, your respondent having nothing left her for a means of support.

Your respondent further shows

your honor That the whole of the purchase money for said land is not yet paid for, there being due thereon more than $1000, a part of which and the next payment being payable next January, 1892.

Your respondent avers and is advised that under these circumstances she is entitled to alimony pendente lite, out of the property of her husband, for the payment of costs, counsel fees &c. And unless this be done she will be unable to defend this suit and at the same support ~~for~~ herself and children. And of this she prays.

Your respondent is advised that she is entitled to a reasonable support for herself and children out of her husbands property and of this she prays.

Now having fully answered &c she prays to be hence dismissed with her costs in this behalf expended. & she will ever pray &c.

Sallie Dayson by
E. W. Cunningham

Virginia Lee Co. To wit:

This day Sallie Payne personally appeared before me the undersigned and made oath that the facts contained in the above answer is true so far as made upon her own knowledge and information and in so far as made upon the information of others she believes to be true. This Nov. 26th 1887.

James W. Orr Commr in Chancery Lee County Circuit Court.

Sallie Payne

Ada Lawrence

Jerome Payne

James Payne Complt.
vs.
Sallie Payne Deft.
} In Chancery.

This cause came on again this day to be heard upon the bill of complt., answer of Deft., and the depositions of witnesses taken and filed therein and was argued by counsel: On consideration of all which and for reasons appearing to the court, it is adjudged, ordered and decreed that said bill be dismissed and that the Deft. recover from the plaintiff her costs in this behalf expended, & for the collection of which execution may issue. And this cause is stricken from the docket.

James Payne

vs } Decree final

Lucia Payne

Entd Ohio O.B.
page 258.
April 2nd 1890.
J. A. Lyons

enter this
April 2/90.
H. L. K. M

Mrs. Sallie Payne.

You will please take notice that on the 26th day of November 1889 at the office of G. B. Cockrell, J.P. at Cumberland Gap Va. I will proceed to take the depositions of + others, which depositions are intended to be read as evidence in my behalf in a certain suit in Chancery now pending in the circuit court of Lee county Va, in which I am plaintiff and you are defendant. November 20th 1889.

James Payne by
Counsel.

James Payne
vs } Notice
Sallie Payne.

I accept legal Service of the within Notice. Nov 28th 1888

Sallie Payne
by T. N. Pennington
her atty.

The depositions of J. S. Gully J. M. Fry

taken at the office of G. B. Cockrell J. P. at Cumberland Gap Va. on the 26th day of Nov 1889. pursuant to notice, hereto attached, which depositions are intended to be read as evidence in behalf of plaintiff, in a certain suit in Chancery pending in the Circuit Court of Lee County Va. in which James Payne is plaintiff and Sallie Payne is defendant, Present James W Orr Counsel for Pltff. and E. W. Pennington Counsel for Deft.

J. S. Gully a witness of lawful age and being first duly sworn deposes & says.

Ques-1st. Are you acquainted with the parties to this suit, and if so, how long have you known them?

Ans-

I am acquainted with the parties and have known them for some time. Since before they were married

Ques- Were you, or not, intimately acquainted with Mrs. Payne before her marriage to the Plaintiff?

Ans

I was better acquainted with Mrs Payne than with Mr Payne I went to school with her before her marriage

Ques - Have you lived near the parties since their marriage, or not?

Ans

I have lived within two miles of them for two or three years and perhaps longer - during the time I worked for Mr Payne some

Ques - During your acquaintance with Mrs Payne & while you were working for Mr Payne, did you hear any expressions from Mrs Payne, of dissatisfaction as to her marriage relations with her said husband?

This quest. is objected to because dissatisfaction or the like are no causes for divorce. Pennington for Deft.

Ans

I heard her remark one while Payne was from home that she wished that he might die before he got back or she wished that he might never get home at least - that was the sum of what she said

Ques - Did you ever know Mrs Payne

during her married life guilty of adultery.
Ans

I dont know that I did

Ques - Did you, or not, at anytime during the said period see any Conduct by Mrs. Payne that made the impression on your mind that she was that kind of woman?

This quest. is objected to because opinions or the like are inadmissible to prove any fact. Pennington for Deft.

Ans I think I have

I think I have seen something not very becoming in a married lady

Ques - Please state what you saw that made this impression?

Ans

From her frump of speech and her talk and actions before other men

X examined by Deft's Counsel.

Quest. 1. Please state how long since you lived in two miles or more of Mr & Mrs. Payne?

Ans

Some two years or more ago and probably longer

Quest. 2. By same.

How long since you observed the acts of which you above spoke that made and impression on your mind that Mrs. Payne was "that kind of a woman"?

Ans

It was during the time I was working for Mr Payne inside of the last four or five years

Quest. 3 By same.

How long since you have lived a greater distance from Mr & Mrs. Payne than "two miles or more"?

Ans

It has been between two and three years

Quest. 4. Through how many years did you work for Mr. Payne, and were you not during that time about their home a great deal.

Ans Some seven or eight years and was about their home a good deal during that time

Quest. 5 How long since

you hear of the remark made by Mrs. Payne that she wishes that Mr. Payne might die, or never return home &c?

Ans I dont remember the exact time but it was while I was working for Mr Payne and will say to the best of my knowledge that it was inside of five years or up time

Quest. 6. Please state if Mr. & Mrs. Payne lived together as husband & wife after the time you heard the remark you just detail?

Ans

~~I suppose they did, part of the time and part of the time they did not~~ they continued to live together as man and wife. but not always agreable

Quest. 7. Please state if you ever saw Mrs. Payne in bed with any other Man than her husband?

Ans

I did not

Quest. 8. When did you first

Communicate to Mrs. Payne the facts you have deposed in this deposition?

Ans

I dont know as I remember some of it perhaps in two or three months and may be some of it in the last two or three years

Reexamined in chief.

Ques. Was the remark by Mrs. Payne that she wished her husband might die and not return &c. in the presence of Mr. Payne, or not?

Ans I hardly think he heard it

Ques. Were the acts &c of which you speak in your examination in chief with other men that made the impression on your mind of which you also speak, in the presence of Mr Payne?

Ans

Not at all times

And further this witness saith not.

J. S. King Gully
mk

John M Fry another witness of lawful age and being duly sworn deposes & says,

Ques. by Deff's Counsel,

Are you acquainted with the parties to this suit & if so how long have you known them?

Ans

Yes Sir - I have known them several years -

Ques - Have you lived near them & how long?

Ans

I have lived near them - in two or three hundred yards of them but it has been several years

Ques - Do you know when Mr Payne seperated from his wife, and if so when was it?

Ans.

Something over a year ago as well as I remember -

Ques - Is Mrs Payne a citizen of Lee County Va.

Ans

Yes Sir

Ques - Was she living in said County July 3rd 1887.

Ans

I think she was I dont know of her living anywhere else

Ques - Was she living in said County for a year prior to July 3rd 1887.

Ans

I am satisfied she was

Ques - Have you any knowledge of Mrs -

Payne being guilty of adultery since her marriage to the Pltff.?

Ans—

I dont know it of a fact but about Sep 1887 I know that a man come into the house late at night and sat down by the bed that she was in and that he afterwards got in bed with her.

Ques—Was this conduct by Deft by the procurement or connivance of the Pltff.

Ans

Not that I know of

Examined by Defts. counsel.

Ques. 1. Please state when ~~you~~ or how long ago, has it been since you told Mr. Payne of this conduct on the part of his wife?

Ans

I never told him untill to day

Ques. 2. Please state who it was that you saw get in bed with Mrs Payne on the occasion of which you speak.

Ans—

James Fry

Ques. 3. Did James Fry ~~get~~

get under the cover, or how was it?

Ans –

I think that he did – as well as I can remember – there was nothing but a fire light in the house –

Ques. 4. Was James Payne at home on that occasion,

Ans –

Yes – he was at home – in bed in another room –

Ques. 5. At what hour of the night was this, and how long did you and James Pay stay there that night?

Ans –

I dont know what time but it was late at night – we both left together but dont know what time of night it was.

Ques. 6. Do you remember whether you or your brother James were drinking any that night?

Ans –

I dont remember but dont think either of us was –

Furthermore this deponent saith not

his
John Mx Dry
mark

J. R. Fry another witness of lawful age and being duly sworn, deposes & says.
Ques by Pltff's Counsel.
Are you acquainted with the parties to this suit.
Ans.
Yes. almost all almost of my life - and I am 25 years old
Ques - Do you, or not, know the fact that the Deft has been guilty of adultery since her marriage to the Pltff?
Ans
I do -
Ques - When did the said act occur?
Ans -
in 1887 sometime from April to September I dont remember exact time
Ques - Have you knowledge of more than one such act?
Ans -
Yes - more than once
Ques - Were the acts of adultery by Mrs Payne by the procurement or connivance of her husband?
Ans - No -
X examined by Defts. counsel
Quest. 1. When did you first

communicate this fact of adultery to Mr. Payne.

Ans.

I dont remember that I ever did

Ques. 2. How long since you first had a conversation with Mr. Payne in regard to to these adulterous acts on the part of Mrs. Payne?

Ans.

Not more than a year ago

Ques. 3. Was it before March 1889, that he had the first conversation with you in regard to said adulterous acts?

Ans. No. I dont ~~think that it was~~ remember when it was.

Ques. 4. Do you remember whether Mr. Payne was over about his ~~had~~ house or his wife lived after you had had your first conversation with him about this matter?

Ans.

I dont know

Furthermore the deponent saith not.

G. R. Fery

I hereby certify that the foregoing depositions of J. S. Gully J. M. Fry and J. R. Fry was taken subscribed and sworn to before me at the time and place and for the purpose mentioned in the caption

Given under my hand the 26th day of Nov 1889

L B Cockrell J.P. L.C.

Justice Fee
3 dep- $ 2.25-
Paid by Pltff

James Payne
vs
Deft.
Sallie Payne

Filed Nov. 29/1889
J. L. Stratt C

J.P. Fee $2.25

Mrs. Sallie Payne.

You will please take notice that on the 10th day of ~~February~~ March 1890, at the ~~law~~ Clerks office of J. A. L. Hyatt in Jonesville Va. I will proceed to take the depositions of Wm Gully & others, which depositions when taken are intended to be read as evidence in my behalf in a certain suit in chancery now pending in the Circuit Court of Lee County Va. in which I am plaintiff and you are defendant, and if from any cause the taking of said depositions be not commenced on that day, or if commenced be not completed on that day, the taking of the same will be adjourned from day to day and from place to place until completed. Feb. 8th 1890.

James Payne.
By Counsel.

James Payne
vs } Notice
Sallie Payne.

I accept legal service of this notice.
Feb 8th 1880.
E. W. Pennington

The Deposition of William Gulley taken at the ~~Law~~ Clerks office of John A. Hyatt in the town of Jonesville Va. on the 10th March 1890, pursuant to the notice thereto attached, which when taken are intended to be read as evidence on behalf of James Payne Plaintiff vs Sallie Payne Deft, in a suit in Chancery now pending in Lee Circuit Court, under this style.

Said William Gulley being duly sworn deposes and says.

I am well acquainted with the parties to this suit, I lived with them about Six months, or longer some time after they were married.

I know that the said Sallie Payne was guilty of acts of adultery and that she had sexual intercourse with an other man, than her husband, at various times.

And I am confident that these adulterous acts were committed without the connivance or procurement of her said husband, I know that he suspicioned that she was proving untrue to him, and that this seemed to bother him a great deal, my recollection is that I lived with them in the year 1885. and it was while I lived with them

that I knew of these adulterous acts taking place; and it was at this time that he talked with me about the matter. I know that he was living with his wife Aug. 1887, since which time I have not been in their neighborhood. He stated to me that he suspicioned her guilty he did not state to me that he knew that she was guilty, as I now remember.

Wit claim
S. 66

And further this witness saith not.

Wm Gulley

The foregoing deposition was taken at the time and place and for the purposes mentioned in the caption, sworn to and subscribed by the witness before me, Given under my hand this 10th March 1890.

J. A. L. Hyatt Comm

Witness Fees
Wm Gulley
Julia Payne
Filed March 14 1890
J. A. L. Hyatt Clk

Witness Fees
Jerry Gulley 1.00
" 32
" 40
$1.72

The depositions of Annie Lamont!

taken at the office of G. B. Cockrell J. P. at Cumberland Gap, Va. on the 26th day of Nov., 1889 pursuant to agreement of the parties counsel in this cause, which depositions when taken are intended to be read as evidence in behalf of Sallie Payne in a certain suit in chancery now pending in the circuit court of Lee Co. Va. in which James Payne is Plaintiff and Sallie Payne is defendant.

Present James Payne and his counsel J. H. Orr, and Sallie Payne and E. W. Pennington her counsel.

Annie Lamont a witness of lawful age after being sworn deposes and saith:

Quest. 1. Are you acquainted with Mr. & Mrs. Payne the parties to this suit; and what is the extent of that acquaintance?

Ans. Am acquainted with them and have been all my life

have lived with them at their house. I have lived with them 5 or 6 months at a time dont know how long that I lived with them

Ques. 2. During the time you lived with them, did they live together as husband & wife?

Ans. Yes Sir

Ques. 3. State if you know anything about Mr. Payne going West, if so state how long ago that was him, and when he returned?

Ans I know that he went west in the year 1888 and he returned the same year as well as I recollect

Ques. 4. Can you state the time he was out west or your from home in the year 1888?

Ans No sir I dont believe that I can

Ques 5. Can you remember whether he returned before Christmas 1888, if so about how long before?

Ans

he come home before christmas - dont know how long before

Ques 6. After he came home did he live with his wife Mrs. Payne?

Ans no sir - he stayed at Mr Kincards. but was at home as often as once a week or more - and would stay all night

Ques. 7. Do you know what Mr. Payne was doing at Mr. Kincades? if so state what?

Ans.

I do not know - but heard him say he was working at the steam mill

Ques. 8. While at Mr. Kincade's please state whether he made any provisions for his wife & family during that time?

Ans -

Yes sir - he bought corn for them.

Ques. 9. How long did he stay at Kincade's and during that time how long did he visit his wife?

Ans.

dont know how long he stayed at Kincaids - two or three months thought as well as I recollect - he visited his wife

as long as he stayed there.

Ques. 10. You state he stayed all night with his wife, while he was working at Kincaid's, please state, if you know whether they slept in the same room?

Objected to because leading.

Orr, for Plff.

Ans

They did not sleep in the same room

Ques. 11. Please state if at any time, during the time you have been talking about, the said parties were ever alone at any place or in any room?

Ans

Yes sir - they were alone in a room

Ques. 12. Did you ever know of them being alone in a room more than once, if so, about how often?

Objected to because irrelevant & immaterial

Orr, for Plff.

Ans - Yes sir - nearly every time that he come home

Ques. 13. How long ~~since~~ has it been, since Mr. Payne ceased to visit his wife?

Ans.

He has visited them all the Time

Ques. 14. While you have been living with Mrs. Payne please state if you ever saw or observed any acts on her part, that were adulterous.

Objected to because Deft. can not bolster her case in this way.

Orr for Plff.

Ans

No Sir — I have not

Ques. 15. Please state what has been the conduct of Mrs. Payne, as a wife, since you have been acquainted with her?

Objected to because too general and inadmissable

Orr, for Plff.

Ans

I dont know as I can state

+ Examined.

Ques — Were not Mr Payne's children living

with his wife at the time he returned from the west and during the time he worked with Kincaid?

Ans

Yes Sir – they were

Ques – From your observation, was Mr. Payne fond of his children as a parent generally is?

Ans

I think he was of four of them

Ques – Was there one he did not seem to be so fond of?

Ans

Yes Sir —

Ques – Please state if you know, or ever heard him say, why it was he was not so fond of that one?

This and all the above questions on Examination and answers thereto are objected to because irrelevant and immaterial to the grounds for a divorce. Pennington for Dft.

Ans

No Sir – I have heard of his giving a reason – but never heard him myself

Ques – Did you not see Mr. Payne while at Kincaids visit – his children and not his wife?

Ans

I dont know

Ques - How do you know he and his wife were ever in a room alone?

Ans

I have seen them go in - and I have at the same time been passing in and out.

Ques - Were not the children or some of them in the room at the times of which you speak.

Ans

No sir. They were not in the room

And further more the deponent saith not

Annie X Lamont
mk

The forgoing deposition of Annie Lamont was taken subscribed and sworn to before me at the time and place mentioned in the caption and for the purpose therein mentioned

Given under my hand at the 26th day of Nov 1889

L B Cockrell J.P. L.C.

Justice Fee
1 dep - 75

Sallie Payne
ads
Deft.
James Payne

Filed Nov. 29th 1889.
J. A. S. Hyatte

J. P. Fee 75-

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon Sallie Payne

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the first Monday in October next, being rule day to answer a bill in Chancery exhibited in our said Court against her by James Payne

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse.
This 11th day of Sept 18 59, in the 11 year of the Commonwealth.

J. A. G. Hyatt *Clerk.*

A Copy Teste

R & C

James Payne
vs } Spa in Chcy
Sallie Payne

To 1st Octo Rules 1889

Executed by delivering an office copy of the within Spa to Sallie Payne this the 17th of Oct 1889

C H Kincaid
Dpy for A B Munce
S L C

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon Sallie Payne

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the ~~next~~ first Monday in Aug. 1889 being rule day to answer a bill in Chancery exhibited in our said Court against her by James Payne

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse. This 30 day of July 1889 in the 113 year of the Commonwealth.

J. A. G. Hyatt *Clerk.*

A Copy Teste

(R+C)

James Payne
vs
Spainchey
Sallie Payne

Sol. Aug. Rules 1889.

Not executed
the Deft not
being found
in my bailiwick. Aug. 2nd
1889.
W. M. Reason D. S

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

We Command You to Summon Sallie Payne

To appear at the Clerk's Office of the Circuit Court of Lee County, at the Courthouse on the ~~first~~ Monday in August 1889 ~~next~~, being rule day to answer a bill in Chancery exhibited in our said Court against her by James Payne

And have then and there this writ. Witness, J. A. G. Hyatt, Clerk of said Court at the Courthouse. This 3rd day of July 1889, in the 113 year of the Commonwealth.

J. A. G. Hyatt *Clerk.*

A Copy Teste J. A. G. Hyatt C

for

Sallie Payne

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

WE COMMAND YOU TO SUMMON Wm Gully

To appear before the ~~Judge~~ undersigned Commissioner of our Circuit Court of Lee County, at the courthouse on the 18th day of Feb 1890 at his office ~~term next~~ to testify and the truth to speak in behalf of James Payne in certian matters of controversy pending in our said Court between said Payne

Plaintiff, and Sallie Payne

Defendant. And this he shall in no wise omit under the penalty of Twenty Dollars. And have then there this writ. Witness, J. A. G. Hyatt, Comr ~~Clerk~~ of our said Court at the Courthouse.

This 10th day of Feb 1890, in the 11 year of the Commonwealth.

J. A. G. Hyatt Comr. ~~Clerk.~~

James Payne
55 S. Spa
Billie Payne

18th Feb' 1890.

Not executed
February the 20 1890

P. M. Reason Dep. S.

The Commonwealth of Virginia.

To The Sheriff Of Lee County Greeting:

WE COMMAND YOU TO SUMMON Wm. T. Gulley

To appear before the Judge of our Circuit Court of Lee County, at the courthouse on the 10th day of March 1898 term next to testify and the truth to speak in behalf of Fannie Payne in certian matters of controversy pending in our said Court between Paul Payne

Plaintiff, and Sallie Payne

Defendant. And this she shall in no wise omit under the penalty of Twenty Dollars. And have then there this writ. Witness, J. A. G. Hyatt, Clerk of our said Court at the Courthouse.

This 6 day of Mo. 18 99, in the 11 year of the Commonwealth.

J. A. G. Hyatt Clerk.

James Payne
vs
Sallie Payne

To 10th March 1890

Executed March the 5
1890
P. M. Redwoi Dep. S.